

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

RLI Insurance Company,

Plaintiff,

vs.

Innovative Employer Solutions, LLC d/b/a
Payroll+Medics and John Does 1-200

Defendants.

Civil Action No.: 6:20-cv-01289-DCC

**ANSWER OF INNOVATIVE EMPLOYER
SOLUTIONS, LLC D/B/A
PAYROLL+MEDICS TO FIRST
AMENDED COMPLAINT**

Answering Plaintiff's First Amended Complaint, Defendant Innovative Employer Solutions, LLC d/b/a Payroll+Medics (IES) responds and alleges as follows:

FOR A FIRST DEFENSE
(General/Specific Denial)

Each and every allegation of the First Amended Complaint is denied and legal proof is demanded thereof unless expressly admitted herein. To the extent any allegation may not be expressly referred to and specifically answered, it is hereby denied.

1. The allegations contained in Paragraph 1 of the First Amended Complaint are denied based upon lack of information to admit or deny.

2. The allegations contained in Paragraph 2 of the First Amended Complaint are denied.

3. The allegations contained in Paragraph 3 of the First Amended Complaint are denied.

4. The allegations contained in Paragraph 4 of the First Amended Complaint are admitted upon information and belief.

5. The allegations contained in Paragraph 5 of the First Amended Complaint are admitted.

6. The allegations contained in Paragraph 6 of the First Amended Complaint are admitted.

7. The allegations contained in Paragraph 7 of the First Amended Complaint are admitted.

8. The allegations contained in Paragraph 8 of the First Amended Complaint are admitted.

9. The allegations contained in Paragraph 9 of the First Amended Complaint are denied based upon lack of information to either admit or deny.

10. The allegations contained in Paragraph 10 of the First Amended Complaint are denied based upon lack of information to either admit or deny.

11. The allegations contained in Paragraph 11 of the First Amended Complaint are denied based upon lack of information to either admit or deny.

12. The allegations contained in Paragraph 12 of the First Amended Complaint are denied based upon lack of information to either admit or deny.

13. The allegations contained in Paragraph 13 of the First Amended Complaint are denied based upon lack of information to either admit or deny.

14. The allegations contained in Paragraph 14 of the First Amended Complaint are denied based upon lack of information to either admit or deny.

15. The allegations contained in Paragraph 15 of the First Amended Complaint are denied based upon lack of information to either admit or deny.

16. The allegations contained in Paragraph 16 of the First Amended Complaint are denied based upon lack of information to either admit or deny.

17. The allegations contained in Paragraph 17 of the First Amended Complaint are denied based upon lack of information to either admit or deny.

18. The allegations contained in Paragraph 18 of the First Amended Complaint are admitted as to the Complaint purports to set forth a claim for declaratory judgment under the Federal

Declaratory Judgment Act, 28 U.S.C. § 2201, and Rule 57 of the Federal Rules of Civil Procedure. Except as expressly admitted, Defendant IES denies the allegations.

19. The allegations contained in Paragraph 19 of the First Amended Complaint are denied.

20. The allegations contained in Paragraph 20 of the First Amended Complaint are admitted.

21. The allegations contained in Paragraph 21 of the First Amended Complaint are admitted.

22. The allegations contained in Paragraph 22 of the First Amended Complaint are admitted.

23. The allegations contained in Paragraph 23 of the First Amended Complaint are admitted.

24. The allegations contained in Paragraph 24 of the First Amended Complaint are admitted.

25. The allegations contained in Paragraph 25 of the First Amended Complaint are admitted.

26. The allegations contained in Paragraph 26 of the First Amended Complaint are admitted.

27. The allegations contained in Paragraph 27 of the First Amended Complaint are denied to the extent the allegations are that IES handled or controlled any money or funds from any client. The funds were handled by Cloud Payroll, LLC (Complaint - Exhibit A, Para. 7.2)

28. The allegations contained in Paragraph 28 of the First Amended Complaint are admitted as allege each IES client had an agreement with CloudPayroll and IES has a “software license and service agreement” with CloudPayroll, all for payroll services for the clients of IES. Any remaining allegations are denied.

29. The allegations contained in Paragraph 29 of the First Amended Complaint are admitted as allege the clients of IES and IES began using the services of CloudPayroll on or about January 2019. Any remaining allegations are denied.

30. The allegations contained in Paragraph in 30 of the First Amended Complaint are admitted as allege the misappropriation of funds of clients of IES and of IES itself by

CloudPayroll and Michael Mann, and these actions by CloudPayroll and Michael Mann are the sole cause of the lost funds.

31. The allegations contained in Paragraph 31 of the First Amended Complaint are admitted upon information and belief.

32. The allegations contained in Paragraph 32 of the First Amended Complaint are admitted upon information and belief.

33. The allegations contained in Paragraph 33 of the First Amended Complaint are admitted.

34. The allegations contained in Paragraph 34 of the First Amended Complaint are admitted.

35. The allegations contained in Paragraph 35 of the First Amended Complaint are admitted.

36. The allegations contained in Paragraph 36 of the First Amended Complaint are admitted.

37. The allegations contained in Paragraph 37 of the First Amended Complaint are admitted as to the words in the Exhibit C and denied as to the accuracy or correctness of the assertions contained therein.

38. The allegations contained in Paragraph 38 of the First Amended Complaint are admitted as to the words in the Exhibit C and denied as to the accuracy or correctness of the assertions contained therein.

39. The allegations contained in Paragraph 39 of the First Amended Complaint are admitted.

40. The allegations contained in Paragraph 40 of the First Amended Complaint are admitted.

41. The allegations contained in Paragraph 41 of the First Amended Complaint are admitted as to the words in the Exhibit E and denied as to the accuracy or correctness of the assertions contained therein.

42. The allegations contained in Paragraph 42 of the First Amended Complaint are admitted.

43. The allegations contained in Paragraph 43 of the First Amended Complaint are admitted as to the words in the Exhibit F and denied as to the accuracy or correctness of the assertions contained therein.

44. The allegations contained in Paragraph 44 of the First Amended Complaint are admitted as to the words in the Exhibit G and denied as to the accuracy or correctness of the assertions contained therein.

45. The allegations contained in Paragraph 45 of the First Amended Complaint are admitted as to the words in the Exhibit G and denied as to the accuracy or correctness of the assertions contained therein.

46. The allegations contained in Paragraph 46 of the First Amended Complaint are admitted.

47. The allegations contained in Paragraph 47 of the First Amended Complaint are admitted.

48. The allegations contained in Paragraph 48 of the First Amended Complaint are admitted.

49. The allegations contained in Paragraph 49 of the First Amended Complaint are admitted as to the words in the Exhibit G and denied as to the accuracy or correctness of the assertions contained therein.

50. The allegations contained in Paragraph 50 of the First Amended Complaint are neither admitted nor denied, and interpose an objection based upon attorney-client privilege and move to strike this allegation from the Complaint. To the extent a response is required, the allegations as stated are denied.

51. The allegations contained in Paragraph 51 of the First Amended Complaint are admitted as to the words in Exhibit I and denied as to the accuracy or correctness of the assertions contained therein.

52. The allegations contained in Paragraph 52 of the First Amended Complaint are admitted as to the words in Exhibit J and denied as to the accuracy or correctness of the assertions contained therein.

53. The allegations contained in Paragraph 53 of the First Amended Complaint are admitted as to the words in Exhibit G and denied as to the accuracy or correctness of the assertions contained therein.

54. The allegations contained in Paragraph 54 of the First Amended Complaint are admitted as to the words in Exhibit G and denied as to the accuracy or correctness of the assertions contained therein.

55. The allegations contained in Paragraph 55 of the First Amended Complaint are admitted as to the words in Exhibit K and denied as to the accuracy or correctness of the assertions contained therein.

56. The allegations contained in Paragraph 56 of the First Amended Complaint are admitted as to the words in Exhibit G and denied as to the accuracy or correctness of the assertions contained therein.

57. The allegations contained in Paragraph 57 of the First Amended Complaint are admitted as to the words in Exhibit L and denied as to the accuracy or correctness of the assertions contained therein.

58. The allegations contained in Paragraph 58 of the First Amended Complaint are admitted as to the words in Exhibit M and denied as to the accuracy or correctness of the assertions contained therein.

59. The allegations contained in Paragraph 59 of the First Amended Complaint are admitted as to the words in Exhibit N and denied as to the accuracy or correctness of the assertions contained therein.

60. The allegations contained in Paragraph 60 of the First Amended Complaint are admitted as to the words in Exhibit O and denied as to the accuracy or correctness of the assertions contained therein.

61. The allegations contained in Paragraph 61 of the First Amended Complaint are admitted as to the words in Exhibit P and denied as to the accuracy or correctness of the assertions contained therein.

62. The allegations contained in Paragraph 62 of the First Amended Complaint are admitted as to the words in Exhibit Q and denied as to the accuracy or correctness of the assertions contained therein.

63. The allegations contained in Paragraph 63 of the First Amended Complaint are admitted as to the words in the Exhibits and denied as to the accuracy or correctness of the assertions contained therein.

64. The allegations contained in Paragraph 64 of the First Amended Complaint are admitted.

65. The allegations contained in Paragraph 65 of the First Amended Complaint are admitted.

66. The allegations contained in Paragraph 66 of the First Amended Complaint are admitted.

67. The allegations contained in Paragraph 67 of the First Amended Complaint are admitted.

68. The allegations contained in Paragraph 68 of the First Amended Complaint are admitted.

69. The allegations contained in Paragraph 69 of the First Amended Complaint are admitted which allege Cloud Payroll CEO was arrested for fraud and stealing the money of IES and of several other of its clients and IES had reported the theft of its money and the fraud scheme to

authorities and received angry emails seeking answers to how the situation was developing. Remaining allegations of Paragraph 69 are denied.

70. The allegations contained in Paragraph 70 of the First Amended Complaint are admitted.

71. The allegations contained in Paragraph 71 of the First Amended Complaint are admitted.

72. The allegations contained in Paragraph 72 of the First Amended Complaint are admitted.

73. The allegations contained in Paragraph 73 of the First Amended Complaint are denied.

74. The allegations contained in Paragraph 74 of the First Amended Complaint are admitted.

75. The allegations contained in Paragraph 75 of the First Amended Complaint are denied although there was correspondence with clients and their frustration with the fraud situation.

76. The allegations contained in Paragraph 76 of the First Amended Complaint are admitted.

77. The allegations contained in Paragraph 77 of the First Amended Complaint are denied although there was correspondence with clients and their frustration with the fraud situation.

78. The allegations contained in Paragraph 78 of the First Amended Complaint are admitted.

79. The allegations contained in Paragraph 79 of the First Amended Complaint are admitted.

80. The allegations contained in Paragraph 80 of the First Amended Complaint are admitted.

81. The allegations contained in Paragraph 81 of the First Amended Complaint are admitted.

82. The allegations contained in Paragraph 82 of the First Amended Complaint are admitted because there were no claims against IES in the time frame referenced.

83. The allegations contained in Paragraph 83 of the First Amended Complaint are admitted.

84. The allegations contained in Paragraph 84 of the First Amended Complaint are admitted.

85. The allegations contained in Paragraph 85 of the First Amended Complaint are admitted that allege the insurance agent sent an email to their business partner RLI to address retroactive

coverage dates. The remaining allegations of Paragraph 85 of the First Amended Complaint are denied.

86. The allegations contained in Paragraph 86 of the First Amended Complaint are admitted.

87. The allegations contained in Paragraph 87 of the First Amended Complaint are admitted.

88. The allegations contained in Paragraph 88 of the First Amended Complaint are admitted.

89. The allegations contained in Paragraph 89 of the First Amended Complaint are admitted.

90. The allegations contained in Paragraph 90 of the First Amended Complaint are admitted.

91. The allegations contained in Paragraph 91 of the First Amended Complaint are admitted.

92. The allegations contained in Paragraph 92 of the First Amended Complaint are admitted as to the words in the Exhibits and denied as to the accuracy or correctness of the assertions contained therein.

93. The allegations contained in Paragraph 93 of the First Amended Complaint are admitted as allege there were additional client communications to Michael Murray regarding the Cloud Payroll fraud matter. The remaining allegations are denied.

94. The allegations contained in Paragraph 94 of the First Amended Complaint are admitted upon information and belief.

95. The allegations contained in Paragraph 95 of the First Amended Complaint are admitted, as a change endorsement was issued effective February 14, 2020. The remaining allegations are denied. .

96. The allegations contained in Paragraph 96 of the First Amended Complaint are denied based upon lack of information to either admit or deny.

97. The allegations contained in Paragraph 97 of the First Amended Complaint are admitted.

98. The allegations contained in Paragraph 98 of the First Amended Complaint are admitted, this was filed by the insurance agency.

99. The allegations contained in Paragraph 99 of the First Amended Complaint are admitted, this was filled by the insurance agency.

100. The allegations contained in Paragraph 100 of the First Amended Complaint are admitted.

101. The allegations contained in Paragraph 101 of the First Amended Complaint are admitted.

102. The allegations contained in Paragraph 102 of the First Amended Complaint are denied.

103. The allegations contained in Paragraph 103 of the First Amended Complaint are answered individually by the foregoing responses.

104. The allegations contained in Paragraph 104 of the First Amended Complaint are denied.

105. The allegations contained in Paragraph 105 of the First Amended Complaint are denied.

106. The allegations contained in Paragraph 106 of the First Amended Complaint are denied.

107. The allegations contained in Paragraph 107 of the First Amended Complaint are denied.

108. The allegations contained in Paragraph 108 of the First Amended Complaint are denied.

109. The allegations contained in Paragraph 109 of the First Amended Complaint are denied.

110. The allegations contained in Paragraph 110 of the First Amended Complaint are denied.

111. The allegations contained in Paragraph 111 of the First Amended Complaint are admitted as allege IES did not report any claim or SCDOR Complaint and did not believe any claim was made against it at the time in question. Remaining allegations in Paragraph 111 are denied.

112. The allegations contained in Paragraph 112 of the First Amended Complaint are admitted.

113. The allegations contained in Paragraph 113 of the First Amended Complaint are denied based upon lack of information to admit or deny.

114. The allegations contained in Paragraph 114 of the First Amended Complaint are denied.

115. The allegations contained in Paragraph 115 of the First Amended Complaint are denied based upon lack of information to admit or deny.

116. The allegations contained in Paragraph 116 of the First Amended Complaint are denied.

117. The allegations contained in Paragraph 117 of the First Amended Complaint are answered individually by the foregoing responses.

118. The allegations contained in Paragraph 118 of the First Amended Complaint are admitted.

119. The allegations contained in Paragraph 119 of the First Amended Complaint are denied.

120. The allegations contained in Paragraph 120 of the First Amended Complaint are admitted as allege receipt of the emails from frustrated clients and all remaining allegations are denied.

121. The allegations contained in Paragraph 121 of the First Amended Complaint are admitted as allege receipt of the emails from frustrated clients and all remaining allegations are denied.

122. The allegations contained in Paragraph 122 of the First Amended Complaint are denied.

123. The allegations contained in Paragraph 123 of the First Amended Complaint are denied based upon lack of information to admit or deny.

124. The allegations contained in Paragraph 124 of the First Amended Complaint are denied.

125. The allegations contained in Paragraph 125 of the First Amended Complaint are denied based upon lack of information to admit or deny.

126. The allegations contained in Paragraph 126 of the First Amended Complaint are denied based upon lack of information to admit or deny.

127. The allegations contained in Paragraph 127 of the First Amended Complaint are admitted.

128. The allegations contained in Paragraph 128 of the First Amended Complaint are denied based upon lack of information to admit or deny.

129. The allegations contained in Paragraph 129 of the First Amended Complaint are admitted.

130. The allegations contained in Paragraph 130 of the First Amended Complaint are denied based upon lack of information to admit or deny.

131. The allegations contained in Paragraph 131 of the First Amended Complaint are denied based upon lack of information to admit or deny.

132. The allegations contained in Paragraph 132 of the First Amended Complaint are denied.

133. The allegations contained in Paragraph 133 of the First Amended Complaint are denied.

134. The allegations contained in Paragraph 134 of the First Amended Complaint are answered individually by the foregoing responses.

135. The allegations contained in Paragraph 135 of the First Amended Complaint are denied.

136. The allegations contained in Paragraph 136 of the First Amended Complaint are admitted.

137. The allegations contained in Paragraph 137 of the First Amended Complaint are admitted as allege the language in the policy is accurately repeated and remaining allegations are denied.

138. The allegations contained in Paragraph 138 of the First Amended Complaint are admitted.

139. The allegations contained in Paragraph 139 of the First Amended Complaint are admitted.

140. The allegations contained in Paragraph 140 of the First Amended Complaint are admitted.

141. The allegations contained in Paragraph 141 of the First Amended Complaint are denied.

142. The allegations contained in Paragraph 142 of the First Amended Complaint are admitted as allege the timeframe stated and otherwise are denied.

143. The allegations contained in Paragraph 143 of the First Amended Complaint are denied.

144. The allegations contained in Paragraph 144 of the First Amended Complaint are denied.

145. The allegations contained in Paragraph 145 of the First Amended Complaint are answered individually by the foregoing responses.

146. The allegations contained in Paragraph 146 of the First Amended Complaint are denied.

147. The allegations contained in Paragraph 147 of the First Amended Complaint are admitted.

148. The allegations contained in Paragraph 148 of the First Amended Complaint are denied.

149. The allegations contained in Paragraph 149 of the First Amended Complaint are denied.

150. The allegations contained in Paragraph 150 of the First Amended Complaint are denied.

151. The allegations contained in Paragraph 151 of the First Amended Complaint are denied.

152. The allegations contained in Paragraph 152 of the First Amended Complaint are answered individually by the foregoing responses.

153. The allegations contained in Paragraph 153 of the First Amended Complaint are denied.

154. The allegations contained in Paragraph 154 of the First Amended Complaint are denied.

155. The allegations contained in Paragraph 155 of the First Amended Complaint are admitted.

156. The allegations contained in Paragraph 156 of the First Amended Complaint are admitted.

157. The allegations contained in Paragraph 157 of the First Amended Complaint are denied.

158. The allegations contained in Paragraph 158 of the First Amended Complaint are admitted for the initial policy binding and then extended upon the issuance of the change endorsement.

159. The allegations contained in Paragraph 159 of the First Amended Complaint are admitted for the initial policy binding and then extended upon the issuance of the change endorsement.

160. The allegations contained in Paragraph 160 of the First Amended Complaint are admitted as allege some of its clients and of IES itself had taxes not timely paid in 2019 due to the fraud of Mann and Cloud Payroll. Remaining allegations of Paragraph 160 are denied.

161. The allegations contained in Paragraph 161 of the First Amended Complaint are admitted.

162. The allegations contained in Paragraph 162 of the First Amended Complaint are admitted.

163. The allegations contained in Paragraph 163 of the First Amended Complaint are denied.

164. The allegations contained in Paragraph 164 of the First Amended Complaint are denied.

165. The allegations contained in Paragraph 165 of the First Amended Complaint are answered individually by the foregoing responses.

166. The allegations contained in Paragraph 166 of the First Amended Complaint are denied.

167. The allegations contained in Paragraph 167 of the First Amended Complaint are admitted.

168. The allegations contained in Paragraph 168 of the First Amended Complaint are denied.

169. The allegations contained in Paragraph 169 of the First Amended Complaint are denied.

170. The allegations contained in Paragraph 170 of the First Amended Complaint are denied.

171. The allegations contained in Paragraph 171 of the First Amended Complaint are answered individually by the foregoing responses.

172. The allegations contained in Paragraph 172 of the First Amended Complaint are denied.

173. The allegations contained in Paragraph 173 of the First Amended Complaint are admitted.

174. The allegations contained in Paragraph 174 of the First Amended Complaint are denied.

175. The allegations contained in Paragraph 175 of the First Amended Complaint are denied.

176. The allegations contained in Paragraph 176 of the First Amended Complaint are denied.

177. The allegations contained in Paragraph 177 of the First Amended Complaint are denied.

178. The allegations contained in Paragraph 178 of the First Amended Complaint are denied.

179. The allegations contained in Paragraph 179 of the First Amended Complaint are answered individually by the foregoing responses.

180. The allegations contained in Paragraph 180 of the First Amended Complaint are denied.

181. The allegations contained in Paragraph 181 of the First Amended Complaint are admitted.

182. The allegations contained in Paragraph 182 of the First Amended Complaint are denied.

183. The allegations contained in Paragraph 183 of the First Amended Complaint are denied.

184. The allegations contained in Paragraph 184 of the First Amended Complaint are answered individually by the foregoing responses.

185. The allegations contained in Paragraph 185 of the First Amended Complaint are denied.

186. The allegations contained in Paragraph 186 of the First Amended Complaint are admitted.

187. The allegations contained in Paragraph 187 of the First Amended Complaint are denied.

188. The allegations contained in Paragraph 188 of the First Amended Complaint are denied.

189. The allegations contained in Paragraph 189 of the First Amended Complaint are answered individually by the foregoing responses.

190. The allegations contained in Paragraph 190 of the First Amended Complaint are denied.

191. The allegations contained in Paragraph 191 of the First Amended Complaint are admitted.

192. The allegations contained in Paragraph 192 of the First Amended Complaint are denied.

193. The allegations contained in Paragraph 193 of the First Amended Complaint are denied.

FOR AN ADDITIONAL DEFENSE
(Failure to State a Claim)

Plaintiff fails to state a claim for which relief may be granted against this Defendant.

FOR AN ADDITIONAL DEFENSE
(Liability/Remedy Limitations)

Plaintiff's claims and remedies are limited, restricted, or excluded by the substance of any communication between the parties, including documents and/or oral conversations. Further, Defendant's liability, if any, may be limited, restricted, or excluded by the rights, responsibilities, and liability of third parties, either by contract, statute, or equity.

FOR AN ADDITIONAL DEFENSE
(Conditions Precedent)

This Defendant denies that Plaintiff has met all legally-required conditions precedent to the assertion of liability against it.

FOR AN ADDITIONAL DEFENSE
(Intervening Cause)

This Defendant pleads that the occurrence complained of by Plaintiffs was caused by an intervening cause and/or new and independent cause as those terms are known in law.

FOR AN ADDITIONAL DEFENSE
(Principal-Agent)

To the extent Plaintiff is bound by the acts of the agents or agent in acting or failing to act in a manner to provide coverage for Defendant in the manner coverage was sought, Plaintiff's request to deny coverage and rescind the policy should be denied.

FOR AN ADDITIONAL DEFENSE
(No Case or Controversy)

If this action is properly brought between these parties, which is denied, then it is prematurely brought and not ripe for adjudication and therefore should be dismissed.

FOR AN ADDITIONAL DEFENSE
(Missing Party or Parties)

If this action is timely brought, which is denied, then there is a missing party or parties and this action should be dismissed under Rule 19.

FOR AN ADDITIONAL DEFENSE
(Third Party Fault)

This Defendant asserts that the claims against it are barred or limited by the contributing, concurring, intervening, or superseding fault, negligence, or breach by other persons or entities not under its control, including Plaintiff or the insurance agent, and that any fault or negligence by it, the existence of which is denied, was passive and secondary in light of the primary and active fault, negligence, or breach by others.

FOR AN ADDITIONAL DEFENSE
(Non-Waiver)

This Defendant reserves and does not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

Defendant asks for a trial by jury.

WHEREFORE, this Defendant prays that the Court deny all relief sought by Plaintiff, dismiss the Complaint, award Defendant its costs and legal fees, including reasonable attorneys fees, in defending this action, pursuant to SC Code §§ 15-53-10 thru 15-53-140 and the established common law of this state, and any other applicable law and for such other and further relief as is just and proper.

[Signature on next page]

ROGERS TOWNSEND, LLC

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Columbia, South Carolina
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